

WC 10-101

LAW OFFICES OF

HOGAN & HARTSON

815 CONNECTICUT AVENUE
WASHINGTON, D. C. 20008

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

BY HAND

DOCKET FILE COPY ORIGINAL

TELEPHONE (202) 331-4500

CABLE ADDRESS "HOGANDER WASHINGTON"

TELEX: 69-2757, INTL. 64353

WRITER'S DIRECT DIAL NUMBER

(202) 331-4796

September 15, 1980

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SEP 16 1980

POLE ATTACHMENT
BRANCH

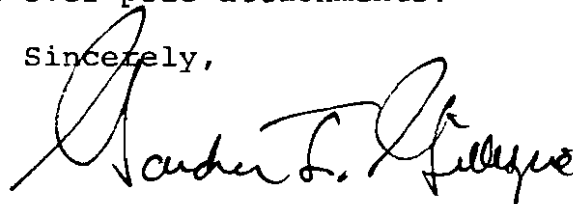
Ms. Margaret Woods, Chief
Pole Attachment Branch
Federal Communications Commission
1919 M Street N. W.
Washington, D. C. 20554

RE: Federal Regulations of Pole
Attachments In The State
of Florida

Dear Ms. Woods:

For your information, enclosed is a copy of the Florida Public Service Commission's Order rescinding its prior Order in which it had asserted jurisdiction over pole attachments.

Sincerely,



Gardner F. Gillespie

GFG:dj

cc: Barry P. Simon, Esq.
Edward M. Waller, Jr., Esq.
Jay E. Ricks, Esq.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

SEP 16 1980

In re: Affirming jurisdiction)
over pole attachment.)

Docket No. 780326-PU

Order No. 9515

Issued: 9-3-80

POLE ATTACHMENT
BRANCH

The following Commissioners participated in the disposition of this matter:

ROBERT T. MANN, CHAIRMAN
WILLIAM T. MAYO
GERALD L. GUNTER
JOSEPH P. CRESSE
JOHN R. MARKS, III

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Federal Communications Commission
Office of the Secretary

SEP 6 1980

By _____

ORDER

BY THE COMMISSION:

By Order No. 8594 entered December 11, 1978, we asserted jurisdiction over "pole attachments" and that order eventually was appealed to the Supreme Court. In its opinion issued May 29, 1980, the Court quashed the order of the Commission Teleprompter Corp. et al. v. Hawkins, So.2d (Fla. 1980). In consideration of this opinion, it is appropriate to rescind our prior orders insofar as they purport to assert jurisdiction over pole attachments. It is therefore

ORDERED by the Florida Public Service Commission that Order No. 8594 be and the same is hereby rescinded consistent with the decision in Teleprompter Corp. v. Hawkins, Supra and Docket No. 780326-PU is hereby closed.

By Order of the Florida Public Service Commission, this 3rd day of September 1980.



STEVE TRIBBLE
COMMISSION CLERK

(S E A L)

NHH

State of Florida



Commissioners:
ROBERT T. MANN, CHAIRMAN
JOSEPH P. CRESSE
GERALD L. (JERRY) GUNTER
JOHN R. MARKS, III
WILLIAM T. MAYO

Office of the General Counsel
Arthur C. Canaday, General Counsel
(904) 488-7464

Public Service Commission

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APR 26 2010

August 4, 1980

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Federal Communications Commission
Office of the Secretary

AUG 7 1980

Ms. Margaret Wood, Chief
Pole Attachments Branch
Federal Communications Commission
Washington, D. C. 20554

POLE ATTACHMENT

Dear Ms. Wood:

The Florida Supreme Court decision in Case No. 56,291, Teleprompter v Hawkins, held that the Florida Public Service Commission lacked jurisdiction over cable television attachments to poles of power and telephone utilities. The 1980 Legislature did nothing to effect a change of that situation. It is our understanding that, consequently, the FCC has such jurisdiction.

Sincerely,

A handwritten signature in cursive script, appearing to read "Virginia Daire Reber".

Virginia Daire Reber
Associate General Counsel

VDR/wt

cc: Chairman Mann
George Hanna
Thomas Gilchrist
Wayne Smith, Esq.

LAW OFFICES OF
HOGAN & HARTSON

815 CONNECTICUT AVENUE
WASHINGTON, D. C. 20007

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JUN 5 9 59 AM '80

TARIFF DIVISION

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APR 26 2010

Federal Communications Commission
Office of the Secretary

W S
B W
M W

TELEPHONE (202) 331-4500

CABLE ADDRESS "HOGANDER WASHINGTON"

TELEX 89-2757, 64353

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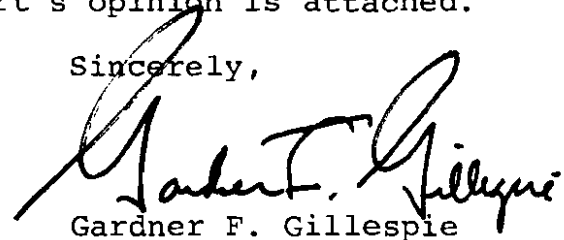
June 3, 1980

Margaret Wood, Esquire
Chief, Pole Attachments Branch
Federal Communications Commission
1919 M Street N. W.
Washington, D. C. 20554

Dear Ms. Wood:

Last Thursday, May 29, 1980, the Florida Supreme Court ruled that the Public Service Commission in that State does not have jurisdiction to regulate pole attachment rates. For your information, a copy of the Court's opinion is attached.

Sincerely,


Gardner F. Gillespie

GFG:dj
Enclosure

Supreme Court of Florida

No. 56,291

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

TELEPROMPTER CORPORATION, ET AL.,
Petitioners,

vs.

PAULA F. BANKINS, ET AL.,
Respondents.

[May 29, 1980]

BOYD, J.

This cause is before us to review an order by the Public Service Commission certifying that it has authority to regulate "pole attachment" agreements. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

Pole attachment agreements are lease agreements between utilities and cable television companies which authorize the latter to use the excess space on utility poles for the purpose of providing their customers cable television service. Because the utilities have superior bargaining position by virtue of their ownership and control over utility poles along with the accompanying easements, Congress granted the Federal Communications Commission (FCC) the authority to regulate these agreements except where such matters are regulated by the state.

Each such state needed to certify that:

- (A) it regulates such rates, terms, and conditions; and
- (B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

Florida Act Amendments of 1978, Pub. L. No. 93-234,
§ 220(c)(21)).

In response to this impending federal regulation, the commission sent notice of certification to the FCC. Subsequently, the commission gave notice and called for briefs from interested parties, following which it entered an order declaring that it has the authority to regulate pole attachment agreements. The petitioners claim that the commission does not have authority to regulate the agreements or consider the interests of cable television subscribers. We agree.

Several years ago the commission held that it could not require utilities to enter into pole attachment agreements. Southern Bell Tel. & Tel. Co., 65 FUR 3d 117 (Fla. Pub. Ser. Comm'n. 1966). In doing so it reasoned:

In 1913, when the Florida legislature enacted a comprehensive plan for the regulation of telephone and telegraph companies in this state, and conferred upon the commission authority to administer the act and to prescribe rules and regulations appropriate to the exercise of the powers conferred therein, the science of television transmission and the business of operating community antenna television systems were not in existence. The 1913 Florida legislature, therefore, could not have envisioned—much less have intended to regulate and control—the television transmission facilities and services with which we are concerned. This is exactly the same kind of situation described by the supreme court of Florida in practically identical language in its opinion in the case of Radio Teleph. Communications v. Southeastern Teleph. Co. (Fla. Sup. Ct. 1964) 37 FUR 3d 136, 170 So.2d 577, when it held that this commission did not have jurisdiction over radio communication service, notwithstanding the interconnection of such radio service with a regulated utility's telephone landline. As the court pointed out in that case, the legislature of Florida has never conferred upon this commission any general authority to regulate "public utilities." Traditionally, each time a public service of this state is made subject to the regulatory power of the commission, the legislature has enacted a comprehensive plan of regulation and control and then conferred upon the commission the authority to administer such plan. This has never been done in so far as television transmission and community antenna television systems are concerned. Community antenna television systems have never been defined as "public utilities" by the legislature, nor is there anything in this record which would justify the conclusion that such systems are vested with a public interest; in actual fact, they may be of such character as to justify public regulation and control. That, however, is a matter for determination by the state legislature. We must conclude on the basis of the record before us, and the present status of the laws of this state, that the Florida Public Service Commission has no jurisdiction or authority over the operations of community antenna television systems and the rates they charge, or the service they provide to their customers.

Id. at 119-20. See also, Twin Cities Cable Co. v. Southeastern Tel. Co., 200 So.2d 857 (Fla. 1st DCA 1967).

Since that decision there has been no relevant change in the commission's statutory grant of jurisdiction. Therefore the reasoning in that decision is still relevant. No reason was given for asserting jurisdiction other than to preempt the FCC from regulating pole attachment agreements. Although we share the concern about federal intervention in an area the state may be better equipped to handle, such concern is not enough to extend the Public Service Commission's jurisdiction. Only the legislature can do that.

We therefore quash the commission's order.

It is so ordered.

ENGLAND, C.J., OVERTON, SUNDBERG, ALDERMAN and McDONALD, JJ., Concur
ADKINS, J., Dissents

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF
FILED, DETERMINED.

Cartiorari to the Florida Public Service Commission

The Law Offices of Hogan and Hartson, Washington, D.C., and William A. Gillen, Edward M. Waller, Jr. and David C. Shobe of Fowler, White, Gillen, Boggs, Villareal and Banker, Tampa, Florida, for Teleprompter Corporation; and George Maxwell III of Rossetter and Maxwell, Melbourne, Florida, for American Television and Communications Corporation,

Petitioners

Prentice P. Pruitt, Barrett G. Johnson and Norman H. Norton, Jr., Tallahassee, Florida, for Florida Public Service Commission,

Respondents

C. Roger Vinson of Beggs and Lane, Pensacola, Florida, for Gulf Power Company,

Intervenor

W. Robert Fokes of Mahoney Hadlow and Adams, Tallahassee, for Florida Cable Television Association; and Leo L. Willis and James D. Beanley of Ansley, McMullen, McGhee, Carothers and Proctor, Tallahassee, Florida, for Tampa Electric Company,

Amici Curiae

7/24/80

per conversations w/ Virginia

Reber, Fla. PSC no longer

Assesses jurisdiction.

Letter to follow

Wayne Small

~~Legal Dep 1~~

488-7464

(904) 487-2740

2740

Virginia
Rader

~~488-8594~~

MEMORANDUM
OF CALL

TO:

Wayne

☐ YOU WERE CALLED BY—

☐ YOU WERE VISITED BY—

Singer Rether

OF (Organization)

☐ PLEASE CALL →

PHONE NO.
CODE/EXT.

704-488-7464

☐ FTS

☐ WILL CALL AGAIN

☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL

☐ WISHES AN APPOINTMENT

MESSAGE

RECEIVED BY

DATE

TIME

63-109

☆ U.S. G.P.O. 1979-281-184/13

STANDARD FORM 63 (Rev. 8-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.6

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations was amended to read as follows:

A. Part 1 - Practice and Procedure.

1. Section 1.1414 is amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) and (e) to read as follows:

§1.1414 State certification.

- (a) If the Commission does not receive certification from a state that:
 - (1) It regulates rates, terms and conditions for pole attachments;
 - (2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and,
 - (3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

* * * * *

- (e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:
 - (1) within 180 days after the complaint is filed with the state, or
 - (2) within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

State of Florida



Commissioners:
ROBERT T. MANN, CHAIRMAN
JOSEPH P. CRESSE
GERALD L. (JERRY) GUNTER
JOHN R. MARKS, III
WILLIAM T. MAYO

Office of the General Counsel
Arthur C. Canaday, General Counsel
(904) 488-7484

Public Service Commission

FILED/ACCEPTED

APR 26 2010

August 4, 1980

Federal Communications Commission
Office of the Secretary

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AUG 1980

Ms. Margaret Wood, Chief
Pole Attachments Branch
Federal Communications Commission
Washington, D. C. 20554

POLE ATTACHMENT
BRANCH

Dear Ms. Wood:

The Florida Supreme Court decision in Case No. 56,291, Teleprompter v Hawkins, held that the Florida Public Service Commission lacked jurisdiction over cable television attachments to poles of power and telephone utilities. The 1980 Legislature did nothing to effect a change of that situation. It is our understanding that, consequently, the FCC has such jurisdiction.

Sincerely,

Virginia Daire Reber
Associate General Counsel

VDR/wt

cc: Chairman Mann
George Hanna
Thomas Gilchrist
Wayne Smith, Esq.

State of Florida



Commissioners:
PAULA HAWKINS, CHAIRMAN
WILLIAM T. MAYO
ROBERT T. MANN

Legal Department
PRENTICE P. PRUITT, DIRECTOR
(904) 488-7921

Public Service Commission

COMMON CARRIER BUREAU

FILED/ACCEPTED

APR 26 2010

December 12, 1978

Federal Communications Commission
Office of the Secretary

DEC 15 1978
TARIFFS AND SERVICES
DIVISION

Mr. Arthur David
Acting Chief
Pole Attachments Branch
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. David:

As specified in the enclosed order, the Florida Public Service Commission recently decided that it does have jurisdiction over pole attachments contracts within the meaning of Public Law 95-234 and has affirmed jurisdiction over the rates, terms and conditions of these contracts. Pursuant to a conversation with Mr. Randy Young of your office, the purpose of this letter is to officially notify you of the assumption of jurisdiction by this Commission.

Sincerely,

A handwritten signature in dark ink, appearing to read "Barrett G. Johnson", written over a horizontal line.

Barrett G. Johnson
Attorney

BGJ/pr

Enclosure